

IN THE MATTER OF

PHONG NGUYEN

Petitioner

: BEFORE THE  
:  
: HOWARD COUNTY  
:  
: BOARD OF APPEALS  
:  
: HEARING EXAMINER  
:  
: BA Case No. 07-019C

.....  
**DECISION AND ORDER**

On October 8, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Phong Nguyen<sup>1</sup> to convert a single-family dwelling into a two-family dwelling conditional use in an R-12 (Residential: Single) zoning district, filed pursuant to Section 131.N.48.a of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Mr. Nguyen was by represented Andrew H. Robinson, Esquire, Carney and Reese. Chien Nguyen testified in support of the petition. William Geer, Cathy Geer, and Geraldine Welling testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

<sup>1</sup> Chien Nguyen served as translator and was sworn in. He was the principal witness.

1. The subject property is located in the 2<sup>nd</sup> Election District on the south side of Waterloo Road where it intersects with Davis Road. It is referenced on Tax Map 31, Grid 19, as Parcel 617 and has a street address of 5620 Waterloo Road (the "Property").

2. The 1.171-acre Property is an irregular, wedged-shaped site on the west side of MD 108 (Waterloo Road) and the south side of Davis Road at their intersection. It is improved with a two-story, brick and frame residential dwelling located about 69 feet from the front lot line on MD 108 and about 71 feet southeast of Davis Road. A paved driveway on Davis Road and directly adjacent to MD 108 where it intersects with Davis Road runs southwest, then becomes a loop driveway and circulation area. It then continues behind the main building to exit at MD 108 near the Property's southeast corner. The grade is moderate, sloping slightly toward the southwest.

3. The principal structure, the two-story dwelling, is about 3,172 square feet in size. Applicant's Exhibit B (part of the petition) includes photographs of the house. It is a two-story, brick structure with a gambrel roof, a side patio and a back deck. According to the petition, there are four bedrooms on the second floor, a kitchen on the first floor (presumably with other rooms) and a kitchen and two bedrooms in the basement. According to the petition, the kitchen was there when the Petitioner acquired the Property. The principal structure has two exterior lights.

4. Southwest of the dwelling are two, block and frame garages and a swimming pool. Near the Property's northwest corner are two smaller structures of unknown use. A wood privacy fence runs along the property line on Davis Road and continues along the southwest rear property line.

5. Most of the Property is open lawn. Large deciduous trees run along Davis Road, a row of large evergreen trees borders a portion of the southeast lot line, and a hedge screens most of the MD 108 frontage.

6. Vicinal properties include an unimproved wooded area on the five-acre Parcel 312 across Davis Road to the northwest, which the Animal Welfare Society owns. Across MD 108 to the northeast is Parcel 188, which is improved with a two-story frame, single-family detached dwelling sited very close to the road. To the southeast is Parcel 572, which is improved by a two-story frame, single-family detached dwelling fronting on Montgomery Road. To the southwest, Parcel 216 is improved with a two-story frame, single-family detached dwelling fronting on Davis Road.

7. The dwelling on Parcel 216, which is owned by William and Cathy Geer, is sited toward the subject property's southwest property line. It is therefore closer to the pool than the dwelling.

8. MD 108 in this area has two travel lanes, a left turn lane to Davis Road from northbound MD 108, and a variable pavement width with a proposed 100-foot right-of-way. The posted speed limit is 45 miles per hour. The estimated sight distance from the MD 108/Davis Road driveway is about 500 feet to the north and over 600 feet to the southeast. According to the Department of Public Works/State Highway Administration, the traffic volume on MD 108 south of MD 104 was 12,475 average daily trips as of May 2005.

9. The Property is served by public water and sewer facilities. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential." The General Plan Transportation Map depicts MD 108 as a Minor Arterial.

10. The petition is subject to the Adequate Public Facilities Ordinance should the County determine a Site Development Plan is necessary for the Facility. The proposed must pass the test for adequate road facilities unless the County determines the facility would not generate additional traffic.

11. The Petitioner is proposing to convert, after the fact, a single-family dwelling into a two-family dwelling pursuant to Section 131.N.48.a. Mr. Chien Nguyen avers there are currently eight tenants residing at the Property, whose average tenancy is one year or more. They are all employees of Mr. Phong Nguyen's business, Nail Trix. No additional tenants would occupy the dwelling if the conditional use were approved.

12. Mr. Chien Nguyen testified that the basement has a kitchen and two rooms. The first floor of the proposed upper dwelling has a kitchen, two rooms, and on the second floor, six bedrooms (not four, as the petition states). Each floor has its own bathroom.

13. He stated the current occupants share vehicles, that all tenants park to the rear of the dwelling, and that these vehicles are not generally visible from the Route 108.

14. Mr. Chien Nguyen testified to having a rental license for one dwelling, which expires in November.

15. In response to statements by William Geer about tenants causing noise, Mr. Nguyen stated he responded to complaints from neighbors about problems, found none when he arrived, and spoke to the tenants about the problems in an effort to resolve them.

16. William Geer testified that his property adjoins the subject property's southwest lot line and that the number of occupants did not help the community. He also stated parts of the post fences along the southwest property line are in disrepair. He stated commercial deliveries are made to the Property. In response, Mr. Nguyen testified that bulk items are stored at the Property for later transport to the nail salons.

17. Geraldine Welling, who testified to living about one and one-half blocks from the Property, expressed concerned about the nature of the fencing around the pool, which she said

appeared to be in violation of county requirements. She also stated the perimeter fence was in disrepair.

18. All three persons testifying in opposition expressed concern about the piles of garbage on the road.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. General Criteria for Conditional Uses (Section 131.B)**

1. General Plan. The Howard County General Plan designates the area in which the Property is located as a "Residential Area" land use. MD 108 is depicted as Minor Arterial on the Transportation Map 2000-2020 of the 2000 General Plan and Davis Road is a local road. The proposed use is residential in nature. A two-family dwelling is presumptively compatible with residential area land use. The Petitioner's proposed use, the after-the-fact conversion of a former single-family dwelling into a two-family dwelling with one dwelling in the basement and one dwelling on the second and third floors, exceeds all setback requirements. The Property is also located along a local road with what appears to be adequate sight distance from the proposed driveways. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property, are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

2. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Site will have adverse effects on vicinal properties beyond those ordinarily associated with two-family dwellings in an R-20 district. The proposed use is

sufficiently distant from adjacent properties, dwellings, and roadways. The Davis Road driveway will provide adequate access to a local road with adequate sight distance.

3. All parking requirements have been met.

4. The granting of the petition would result in the potential addition of eight, apparently unrelated persons in each dwelling. However, the Petitioner, through Mr. Chien Nguyen, testified that no additional tenants are anticipated. Excepting use of the pool, the proposed use will be conducted primarily within the proposed building. Subject to the condition that the Petitioner comply with County pool barrier/fence requirements, that the area of the property adjoining Mr. Geer's property be buffered by additional landscaping, and that there be no commercial deliveries for Nail Trix to the Property and no Nail Trix-related commercial storage, any noise, odor, or light generated by the uses will be attenuated by distance and will not be greater than that ordinarily associated with a two-family dwelling. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with two-family dwellings in the R-20 zoning district.

## **II. Specific Criteria for Two-Family Dwellings (Section 131.N.48.a)**

1. The photographs accompanying the petition indicate the existing dwelling is compatible in scale and character with the surrounding residential neighborhood as required by Section 131.N.47a. Also of relevance to this compatibility determination is the definition of "two-family dwellings": "a building which contains two dwelling units, of which neither is an accessory apartment, and which is arranged, designed or used for occupancy by two families." The dwelling unit is not separated by an attached garage or by an open or enclosed breezeway. The proposed use, the conversion of single-family dwelling into two dwelling units, complies with this definition because it is not separated by an attached garage or by an open or enclosed driveway.

2. Section 131.N.47.b does not apply.

3. Section 131.N.47.b does not apply.

### III. Opposition Testimony

Excluding the above Findings of Fact and Conclusions of Law, the testimony presented by those in opposition to the proposed modifications included unsupported opinions and general conclusions that the proposed two-family dwelling use will increase traffic hazards in the area, contribute to the decline of the community, and depreciate property values. Absent further evidence other than unsupported conclusions or fears that a proposed use of property will result in harm, I must afford the Opposition testimony and evidence little weight. Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974).

Consequently, for the foregoing reasons and except as discussed and found above, I conclude the Opposition has failed its burden to show the proposed two-family dwelling use would have an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with a two-family dwelling.

**ORDER**


Based upon the foregoing, it is this 5<sup>th</sup> day of November May 2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Phong Nguyen for a two-family dwelling conditional use in an R-20 (Residential: Single) Zoning District, is hereby **GRANTED**.

**Provided, however, that:**

1. The requested conditional use shall apply only to the requested use described in the petition and not to any other activities, uses, or structures.
2. The Petitioner shall comply with all agency comments.
3. The Petitioner must obtain rental licenses for each dwelling.
4. No more than eight unrelated persons shall occupy the basement dwelling and no more than eight unrelated persons shall occupy the dwelling on the first and second floor.
5. The Petitioner must bring the pool barrier/fence into compliance with all County requirements, as inspected by the Department of Inspections, Licensing, and Permits..
6. The Petitioner must repair all existing fences.
7. The Petitioner must install a Type C landscape buffer where the Property adjoins William and Cathy Geer's property (8541 Davis Road).
8. There shall be no Nail Trix-related commercial deliveries to the Property.
9. No structure on the Property shall be used for Nail Trix-related storage.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



Michele L. LeFaivre



Date Mailed: 11/7/07

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.